United Nations A/66/571/Rev.1

General Assembly

Distr.: General
30 November 2011

Original: English

Sixty-sixth session
Agenda item 129
International residual mechanism for criminal tribunals

Election of judges of the International Residual Mechanism for Criminal Tribunals

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 1966 (2010) of 22 December 2010, the Security Council decided to establish the International Residual Mechanism for Criminal Tribunals ("the Mechanism") with two branches, to commence functioning on 1 July 2012 (branch for the International Criminal Tribunal for Rwanda) and 1 July 2013 (branch for the International Tribunal for the Former Yugoslavia), respectively.

2. The Security Council also requested, in the same resolution, the Secretary-General to initiate no later than 30 June 2011 the procedures for the selection of the roster of judges of the Mechanism, as provided in the statute of the Mechanism, which is contained in annex I to Security Council resolution 1966 (2010).

3. In accordance with article 8 of the statute of the Mechanism, the Mechanism shall have a roster of 25 independent judges ("judges of the Mechanism"), not more than two of whom may be nationals of the same State. This will be the first election of the judges for the Mechanism.

4. Pursuant to article 10, paragraph 1 (a), of the statute of the Mechanism, the Legal Counsel, on behalf of the Secretary-General, by a circular letter dated 23 June 2011, invited all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for judges of the Mechanism. In accordance with article 10, paragraph 1 (b), of the statute, each State was invited to nominate, within 60 days of the date of the invitation, up to two candidates meeting the qualifications set out in article 9, paragraph 1, of the statute. The Legal Counsel's letter also invited States, in line with United Nations policies, to give due consideration to nominating suitably qualified women candidates. As the number of nominations received by the deadline of 22 August 2011 was insufficient, the Assistant Secretary-General for

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Legal Affairs sent another letter dated 24 August 2011, extending the deadline for nominations to 16 September 2011.

5. Pursuant to article 10, paragraph 3, of the statute of the Mechanism, the judges of the Mechanism shall be elected for a term of four years and shall be eligible for reappointment by the Secretary-General after consultation with the Presidents of the Security Council and the General Assembly.

6. By means of a letter dated 20 October 2011 (S/2011/659), the Secretary-General, in accordance with article 10, paragraph 1 (c), of the statute of the Mechanism, forwarded to the Security Council the 35 nominations which were received within the designated period for submission, as extended, as well as two nominations received after the deadline. On 8 November 2011, the Legal Counsel wrote to the President of the Security Council informing him of the withdrawal of one nomination.

7. The Security Council considered and established a list of 36 candidates for transmittal to the General Assembly. In accordance with article 10, paragraph 1 (d), of the statute of the Mechanism, the list was formally conveyed to the President of the General Assembly by means of a letter dated 16 November 2011 from the President of the Security Council (A/66/564). For ease of reference, the letter identified with an asterisk those candidates with previous judicial experience at the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda, in accordance with article 9, paragraph 1, of the statute of the Mechanism, which provides that "[p]articular account shall be taken" of such experience.

8. The list of candidates for judges of the Mechanism and the procedure for the election of judges of the Mechanism are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/66/572).

II. List of candidates for judges of the Mechanism

9. The list of candidates for judges of the Mechanism is as follows:

Mr. Carmel A. Agius (Malta)*

Mr. Aydin Sefa Akay (Turkey)*

Ms. Olivera Andjelkovic (Serbia)

Mr. Jean-Claude Antonetti (France)*

Ms. Florence Arrey (Cameroon)*

Ms. Solomy Balungi Bossa (Uganda)*

Ms. Lombe P. Chibesakunda (Zambia)

Mr. José Ricardo de Prada Solaesa (Spain)

Mr. Juan Bautista Delgado Cánovas (Spain)

* Persons with experience as judges of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda.

Mr. Juan Antonio Durán Ramírez (El Salvador)

Mr. Ben Emmerson (United Kingdom of Great Britain and Northern Ireland)

Mr. Christoph Flügge (Germany)*

Ms. Graciela Susana Gatti Santana (Uruguay)

Mr. Alfredo Gomez Tedeschi (Uruguay)

Mr. Burton Hall (Bahamas)*

Mr. Vagn Prüsse Joensen (Denmark)*

Mr. Gberdao Gustave Kam (Burkina Faso)*

Mr. Liu Daqun (China)*

Mr. Joseph E. Chiondo Masanche (United Republic of Tanzania)*

Mr. Theodor Meron (United States of America)*

Mr. Bakone Justice Moloto (South Africa)*

Mr. Lee G. Muthoga (Kenya)*

Ms. Aminatta Lois Runeni N'gum (Zimbabwe/Gambia)

Mr. Daniel David Ntanda Nsereko (Uganda)

Ms. Prisca Matimbe Nyambe (Zambia)*

Mr. Alphons Orie (Netherlands)*

Mr. Seon Ki Park (Republic of Korea)*

Ms. Michèle Picard (France)*

Mr. Mparany Mamy Richard Rajohnson (Madagascar)*

Mr. Patrick Lipton Robinson (Jamaica)*

Mr. Ivo Nelson de Caires Batista Rosa (Portugal)

Mr. Carlos Ernesto Sánchez Escobar (El Salvador)

Mr. Wolfgang Schomburg (Germany)*

Mr. William Hussein Sekule (United Republic of Tanzania)*

Ms. Shiranee Tilakawardene (Sri Lanka)

Ms. Tatjana Vukovic (Serbia)

III. Procedure for the election of judges of the Mechanism

10. The election of judges will take place in accordance with articles 9 and 10 of the statute of the Mechanism.

11. It was decided by the General Assembly, during the election of judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993, 1997, 1998, 2001 and 2005, to follow the election procedures for judges of the International Court of Justice given the similar nature

of the election of judges of the International Court of Justice and the election of judges of the two tribunals. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of judges of the Mechanism.

12. In accordance with article 10, paragraph 1 (d), of the statute of the Mechanism, the Holy See, being a non-member State which maintains a permanent observer mission at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

13. On the date of the election, the General Assembly will elect 25 judges of the Mechanism from the list of candidates submitted to it by the Security Council.

14. According to article 9, paragraph 1, of the statute of the Mechanism, judges of the Mechanism shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Particular account shall be taken of experience as judges of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda. According to article 9, paragraph 2, of the statute, due account shall be taken in the composition of the Trial and Appeals Chambers of the experience of the judges in criminal law, international law, including international humanitarian law, and human rights law.

15. In accordance with article 10, paragraph 1 (d), of the statute of the Mechanism, the candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

16. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 193 Member States, together with the one non-member State mentioned in paragraph 12 above. Accordingly, 98 votes constitute an absolute majority in the Assembly for the purpose of the present election.

17. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 25 candidates.

18. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 25, a second ballot will be held and balloting will continue in the same meeting, if and as necessary, until 25 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 25 candidates less the number of candidates who have already obtained an absolute majority.

19. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

20. If, in the first ballot, more than 25 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 25 candidates, and no more, obtain an

absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 25 candidates.

21. When 25 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.